

# EXHIBIT O

Shane McKibben

May 18, 2016

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DISTRICT

JENNIFER PELLOW, as Personal  
Representative of the Estate of  
NATHAN WESLEY PELLOW,

Plaintiff,

vs.

Case No. 15-11765

Hon. Terrance G. Berg

KEVIN BARNHILL, SHANE MCKIBBEN,  
ARTHUR L. GILL, ROBERT ROY,  
JOHN ADAMS and DALE VAN HORN,  
Jointly and Severally,

Defendants.

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The Deposition of OFFICER SHANE MCKIBBEN,  
Taken at 29900 South Civic Boulevard, 2nd floor,  
Warren, Michigan,  
Commencing at 10:08 a.m.,  
Wednesday, May 18, 2016,  
Before Melodie P. Stafford, CSR-8604, RPR, RMR.

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<div>Page 2</div> <div><div>1 APPEARANCES:</div><div>2</div><div>3 JOEL B. SKLAR</div><div>4 Law Offices of Joel B. Sklar</div><div>5 615 Griswold Street</div><div>6 Suite 1116</div><div>7 Detroit, Michigan 48226</div><div>8 313-963-4529</div><div>9 joel@joelbsklar.com</div><div>10 Appearing on behalf of the Plaintiff.</div><div>11</div><div>12 JULIE DRUZINSKI</div><div>13 Garan Lucow Miller, P.C.</div><div>14 1000 Woodbridge Street</div><div>15 Detroit, Michigan 48207</div><div>16 313.446.5501</div><div>17 jdruzinski@garanlucow.com</div><div>18 Appearing on behalf of the Defendants Kevin Barnhill</div><div>19 Shane McKibben, Robert Roy, John Adams and Dale Van</div><div>20 Horn.</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<div>Page 4</div> <div><div>1 TABLE OF CONTENTS</div><div>2</div><div>3 WITNESS PAGE</div><div>4 OFFICER SHANE McKIBBEN</div><div>5</div><div>6 EXAMINATION</div><div>7 BY MR. SKLAR: 5</div><div>8</div><div>9</div><div>10 EXHIBITS</div><div>11</div><div>12 EXHIBIT PAGE</div><div>13 (No exhibits were offered.)</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>
<div>Page 3</div> <div><div>1 WILLIAM LISTMAN</div><div>2 Davis Burket Savage Listman Taylor</div><div>3 10 South Main Street</div><div>4 Suite 401</div><div>5 Mt. Clemens, Michigan 48043</div><div>6 586.469.4300</div><div>7 wlistman@dbsattorneys.com</div><div>8 Appearing on behalf of the Defendant Arthur L. Gill.</div><div>9</div><div>10 ALSO PRESENT</div><div>11 Jennifer Pellow</div><div>12 Sergeant Daniel Bradley</div><div>13 Officer Dale Van Horn</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<div>Page 5</div> <div><div>1 Warren, Michigan</div><div>2 Wednesday, May 17, 2016</div><div>3 10:08 a.m.</div><div>4 OFFICER SHANE McKIBBEN,</div><div>5 was thereupon called as a witness herein, and after</div><div>6 having been first duly sworn to testify to the truth,</div><div>7 the whole truth and nothing but the truth, was</div><div>8 examined and testified as follows:</div><div>9 MR. SKLAR: Let the record reflect that</div><div>10 this is the deposition -- is it Shane McKibben?</div><div>11 THE WITNESS: Yes, I am.</div><div>12 MR. SKLAR: Shane McKibben taken pursuant</div><div>13 to notice and to be used for all purposes allowed</div><div>14 under the Court Rules and Rules of Evidence.</div><div>15 EXAMINATION</div><div>16 BY MR. SKLAR:</div><div>17 Q. Is it Officer McKibben?</div><div>18 A. Yes.</div><div>19 Q. And where are you employed, sir?</div><div>20 A. Based on the advice given by my attorney I hereby</div><div>21 invoke my protections given by the Fifth Amendment of</div><div>22 the Constitution and refuse to answer any questions.</div><div>23 Q. Okay. Let me just briefly go through what a</div><div>24 deposition is and I'm going to make a record. And I</div><div>25 understand what your answer is going to be but I need</div></div>

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<p>1 to ask my questions.</p> <p>2 Essentially what a deposition is is an</p> <p>3 opportunity for lawyers to find out what a witness</p> <p>4 knows or doesn't know. Like if there's a question I</p> <p>5 ask that you don't understand and you can't answer</p> <p>6 it, let me rephrase it. I'll try to make it clear</p> <p>7 for you.</p> <p>8 Let me get my question out before you</p> <p>9 provide an answer.</p> <p>10 This should not take long, but if you need</p> <p>11 a break at any time just let me know.</p> <p>12 Were you -- how tall are you, sir?</p> <p>13 A. Based upon the advice of my attorney I hereby invoke</p> <p>14 my protections given to me by the Fifth Amendment of</p> <p>15 the United States Constitution and refuse to answer</p> <p>16 any further questions.</p> <p>17 Q. And what is your weight, sir?</p> <p>18 A. Based upon the advice given to me by my attorney I</p> <p>19 hereby invoke my Fifth Amendment right to the</p> <p>20 Constitution and refuse to answer any further</p> <p>21 questions.</p> <p>22 Q. Got it. And what was your height and weight as of</p> <p>23 August 30, 2013?</p> <p>24 A. Based upon the advice of my attorney I hereby invoke</p> <p>25 my Fifth Amendment rights.</p>	<p>1 to answer any further questions.</p> <p>2 Q. Have you ever spoken to Captain Matheney about the</p> <p>3 incident concerning Nathan Pellow?</p> <p>4 A. Based upon the advice of my attorney I hereby invoke</p> <p>5 those protections provided to me in the Fifth</p> <p>6 Amendment of the United States Constitution and</p> <p>7 refuse to answer any further questions.</p> <p>8 Q. Did you generate a police report concerning Nathan</p> <p>9 Pellow and the incident of August 30, 2013?</p> <p>10 A. Based upon the advice of my attorney I hereby invoke</p> <p>11 protections provided in the Fifth Amendment under the</p> <p>12 United States Constitution and refuse to answer any</p> <p>13 further questions.</p> <p>14 Q. I'm going to show you what was marked as Exhibit 2 of</p> <p>15 the Gill deposition, which purports to be the police</p> <p>16 report concerning Mr. Pellow. Have you ever seen</p> <p>17 this document before?</p> <p>18 A. Based upon the advice of my attorney I hereby invoke</p> <p>19 those protections provided in the Fifth Amendment of</p> <p>20 the United States Constitution and refuse to answer</p> <p>21 any further questions.</p> <p>22 Q. Did you suffer any injuries as it relates to Nathan</p> <p>23 Pellow?</p> <p>24 A. Based upon the advice of my attorney I hereby invoke</p> <p>25 those protections provided by the Fifth Amendment of</p>
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<p>1 Q. Were you involved in an incident that involved Nathan</p> <p>2 Pellow on August 30th, 2013?</p> <p>3 A. Based upon the advice of my attorney I hereby invoke</p> <p>4 my Fifth Amendment protection rights.</p> <p>5 Q. Did you, on August 30, 2013, did you ever touch</p> <p>6 Mr. Pellow?</p> <p>7 A. Based upon the advice of my attorney I hereby invoke</p> <p>8 those protections given to me by the Fifth Amendment</p> <p>9 of the United States Constitution and refuse to</p> <p>10 answer any further questions.</p> <p>11 Q. On August 30, 2013, did you ever handcuff Nathan</p> <p>12 Pellow?</p> <p>13 A. Based upon the advice of my attorney I hereby invoke</p> <p>14 my protections of my Fifth Amendment rights and</p> <p>15 refuse to answer any further questions.</p> <p>16 Q. On August 30, 2013, did you ever stand on the back of</p> <p>17 Nathan Pellow?</p> <p>18 A. Based upon the advice of my attorney I hereby invoke</p> <p>19 those protections provided in the Fifth Amendment of</p> <p>20 the Constitution and refuse to answer any further</p> <p>21 questions.</p> <p>22 Q. Were you ever interviewed by Internal Affairs</p> <p>23 concerning Nathan Pellow?</p> <p>24 A. Based upon the advice of my attorney I hereby invoke</p> <p>25 my Fifth Amendment Constitutional rights and refuse</p>	<p>1 the United States Constitution and refuse to answer</p> <p>2 any further questions.</p> <p>3 Q. Do you know if any police reports concerning Nathan</p> <p>4 Pellow were altered?</p> <p>5 A. Based upon the advice of my attorney I'm invoking my</p> <p>6 Fifth Amendment rights and refuse to answer any</p> <p>7 further questions.</p> <p>8 Q. Do you know if any of the audio or video recordings</p> <p>9 concerning Nathan Pellow were altered?</p> <p>10 A. Based upon the advice of my attorney I'm hereby</p> <p>11 invoking my Fifth Amendment rights and I refuse to</p> <p>12 answer any further questions.</p> <p>13 Q. Have you spoken to any City of Warren firefighters</p> <p>14 concerning Nathan Pellow?</p> <p>15 A. Based upon the advice of my attorney I hereby invoke</p> <p>16 my Fifth Amendment rights and refuse to answer any</p> <p>17 further questions.</p> <p>18 Q. Have you spoken to any City of Warren officers about</p> <p>19 Nathan Pellow?</p> <p>20 A. Based upon the advice of my attorney I hereby invoke</p> <p>21 my protections of the Fifth Amendment.</p> <p>22 Q. Have you spoken to any City of Warren employees</p> <p>23 concerning Nathan Pellow?</p> <p>24 A. Based upon the advice of my attorney I hereby invoke</p> <p>25 my Fifth Amendment rights.</p>

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<p>1 Q. Do you know if there was any debriefing concerning</p> <p>2 Nathan Pellow after his death on August 30, 2013?</p> <p>3 A. Based upon the advice of my attorney, I'm invoking my</p> <p>4 Fifth Amendment rights.</p> <p>5 Q. Have you ever spoken to Arthur Gill about Nathan</p> <p>6 Pellow?</p> <p>7 A. Based upon the advice of my attorney I'm invoking my</p> <p>8 Fifth Amendment rights.</p> <p>9 Q. Did Arthur Gill tell you to get off of Mr. Pellow?</p> <p>10 A. Based upon the advice of my attorney I'm invoking my</p> <p>11 Fifth Amendment rights.</p> <p>12 Q. Is it fair to say, sir, that if I ask you anything</p> <p>13 concerning Nathan Pellow that you're going to invoke</p> <p>14 your Fifth Amendment right to remain silent?</p> <p>15 A. Based upon the advice of my attorney I'm invoking my</p> <p>16 Fifth Amendment rights.</p> <p>17 Q. How long have you been employed by the City of</p> <p>18 Warren?</p> <p>19 A. Based upon the advice of my attorney I'm hereby</p> <p>20 invoking my Fifth Amendment rights.</p> <p>21 Q. And what is your current rank, sir?</p> <p>22 A. Based upon the advice of my attorney I'm hereby</p> <p>23 invoking my Fifth Amendment rights.</p> <p>24 Q. All right. And what was your rank as of August 30,</p> <p>25 2013?</p>	<p>1 invoking my protections of the Fifth Amendment and</p> <p>2 I'm answering no further questions.</p> <p>3 Q. Has any federal or state law enforcement authority</p> <p>4 contacted you?</p> <p>5 A. Based upon the advice of my attorney I'm invoking my</p> <p>6 Fifth Amendment rights and answering no further</p> <p>7 questions.</p> <p>8 Q. Have you contacted any state or federal authority</p> <p>9 concerning the Pellow matter at all?</p> <p>10 A. Based upon the advice of my attorney I'm hereby</p> <p>11 invoking my Fifth Amendment rights and refusing to</p> <p>12 answer any further questions.</p> <p>13 Q. Are any of the reports contained in Exhibit 2 reports</p> <p>14 that you generated or contributed to?</p> <p>15 A. Based upon the advice of my attorney I'm hereby</p> <p>16 invoking my Fifth Amendment rights and I'm refusing</p> <p>17 to answer any further questions.</p> <p>18 Q. Did you have an audio recording concerning your</p> <p>19 presence at the scene of Mr. Pellow's arrest?</p> <p>20 A. Based upon the advice of my attorney, I'm hereby</p> <p>21 invoking my Fifth Amendment rights and I'm refusing</p> <p>22 to answer any further questions.</p> <p>23 Q. Have you ever seen recordings destroyed at the City</p> <p>24 of Warren?</p> <p>25 A. Based upon the advice of my attorney I'm hereby</p>
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<p>1 A. Based upon the advice of my attorney I'm invoking my</p> <p>2 Fifth Amendment rights.</p> <p>3 Q. Did you ever jump up and down on Mr. Pellow's back?</p> <p>4 A. Based upon the advice given to me by my attorney I'm</p> <p>5 invoking my Fifth Amendment rights.</p> <p>6 Q. Do you have any knowledge of whether or not police</p> <p>7 officers are now canvassing the residence of Jennifer</p> <p>8 Pellow?</p> <p>9 A. Based upon the advice given to me by my attorney I'm</p> <p>10 hereby invoking my Fifth Amendment rights.</p> <p>11 Q. Have you reviewed Arthur Gill's deposition testimony</p> <p>12 that was given on May 10, 2016?</p> <p>13 A. Based upon the advice of my attorney I'm invoking my</p> <p>14 Fifth Amendment rights.</p> <p>15 Q. And you refuse to answer any further questions;</p> <p>16 right? The full statement. I need you to say that</p> <p>17 you're not going to answer.</p> <p>18 A. Based upon the advice given to me by my attorney I'm</p> <p>19 hereby invoking my Fifth Amendment rights. I'm</p> <p>20 answering no further questions.</p> <p>21 Q. That's what I needed to hear, that you weren't going</p> <p>22 to answer.</p> <p>23 Do you know how long your encounter was</p> <p>24 with Nathan Pellow?</p> <p>25 A. Based upon the advice of my attorney I'm hereby</p>	<p>1 invoking my Fifth Amendment rights and refusing to</p> <p>2 answer any further questions.</p> <p>3 Q. Have you ever seen police reports altered or changed</p> <p>4 during your tenure at the City of Warren?</p> <p>5 A. Based upon the advice of my attorney I'm hereby</p> <p>6 invoking my Fifth Amendment rights and refuse to</p> <p>7 answer any further questions.</p> <p>8 Q. At the scene of Arthur Pellow's arrest did you notice</p> <p>9 at any time that he began to turn purple?</p> <p>10 A. Based upon the advice of my attorney I hereby invoke</p> <p>11 my protections to the Fifth Amendment and I refuse to</p> <p>12 answer any further questions.</p> <p>13 Q. At the scene of Arthur Pellow's arrest do you know if</p> <p>14 Arthur Pellow had shackles on his ankles -- or Nathan</p> <p>15 Pellow, excuse me, had ankle shackles?</p> <p>16 A. Based upon the advice of my attorney I'm hereby</p> <p>17 invoking my Fifth Amendment rights and refusing to</p> <p>18 answer any further questions.</p> <p>19 MR. SKLAR: All right. Based on your</p> <p>20 invocation of your Fifth Amendment right against</p> <p>21 self-incrimination I'm going to stop the deposition</p> <p>22 with the understanding, as you've stated, that you're</p> <p>23 not going to answer any questions concerning Arthur</p> <p>24 Pellow and we will follow the appropriate motions</p> <p>25 with the Court. Nathan Pellow. Forgive me. I've</p>

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1 got Arthur Gill on my brain.

2 Thank you so much for your time, Officer.

3 Any questions?

4 MR. LISTMAN: Attorney William Listman. I  
5 have no questions for this witness given he's invoked  
6 his Fifth Amendment rights.

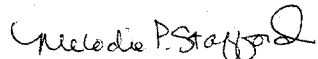
7 MS. DRUZINSKI: And I would just like to  
8 state for the record that we received an email on May  
9 15, 2016, from plaintiff's counsel stating that  
10 plaintiff intended to file a complaint with the DOJ  
11 and/or the FBI as a result of this incident. We  
12 appreciate the professional courtesy, but hence why  
13 we're invoking the Fifth Amendment right today. So  
14 that's all.

15 MR. SKLAR: Thank you very much, Officer.  
16 (The deposition was concluded at 10:18  
17 a.m. Signature of the witness was not  
18 requested by counsel for the respective parties  
19 hereto.)  
20  
21  
22  
23  
24  
25

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1 CERTIFICATE OF NOTARY  
2 STATE OF MICHIGAN )  
3 ) SS  
4 COUNTY OF OAKLAND )  
5

6 I, MELODIE P. STAFFORD, certify that this  
7 deposition was taken before me on the date  
8 hereinbefore set forth; that the foregoing questions  
9 and answers were recorded by me stenographically and  
10 reduced to computer transcription; that this is a  
11 true, full and correct transcription of my  
12 stenographic notes so taken; and that I am not  
13 related to, nor of counsel to, either party nor  
14 interested in the event of this cause.  
15  
16  
17  
18

19 

20  
21 MELODIE P. STAFFORD, CSR-8604  
22 Notary Public,  
23 Oakland County, Michigan.

24 My Commission expires: November 21, 2018  
25

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